

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA K. SMITH and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 99-1757; Submitted on the Record;  
Issued September 5, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant's surgery on May 16, 1997 and subsequent disability were causally related to her employment injury of April 21, 1997.

On April 21, 1997 appellant, a city carrier, filed a claim asserting that she sustained an injury that date while in the performance of her duties. She stated that she picked up a tray of flats to load them into a tub. When appellant turned to put them in the tub, pain shot from her neck to her toe. She described having no feeling in her right arm or left foot.<sup>1</sup>

An emergency room physician saw her that day. He reported a history of upper back pain following heavy lifting. The physician also reported no radiation of the pain and no tingling or numbness. An x-ray was negative. He diagnosed back strain. Appellant stopped work that day, received continuation of pay through June 26, 1997 and returned to work with restrictions on September 3, 1997.

On April 24, 1997 appellant saw Dr. William A. Brennan, a neurosurgeon, who reported "neck and head hurting March 1997."<sup>2</sup> He noted cervical radiculopathy and diagnosed cervical spondylosis. With an affirmative mark, Dr. Brennan indicated that appellant's condition was caused or aggravated by the employment activity described, but he described no employment activity.

On May 16, 1997 appellant underwent an anterior cervical discectomy at C5-6 and fusion. The postoperative diagnosis was herniated disc at the C5-6 level, right. Appellant claimed compensation for wage loss beginning May 19, 1997.

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<sup>1</sup> A triage nursing assessment dated April 21, 1997 indicated that appellant felt pain from her neck to her buttocks with "burning right wrist and left foot cold."

<sup>2</sup> Dr. Brennan first examined appellant on March 25, 1997.

In a form report dated July 14, 1997, Dr. Larry Fishman, a neurosurgeon, noted the date of injury as "March 1997." Dr. Fishman reported a history of "neck and arm pain March 1997." He diagnosed herniated cervical disc and leg and hip pain. With an affirmative mark he indicated that appellant's disability was related to the history of injury given.

On July 31, 1997 the Office notified appellant that it had accepted her claim for the condition of back strain and for no other condition. The Office advised appellant of the medical opinion evidence needed to show whether the incident of April 21, 1997 caused or aggravated another condition.

On August 4, 1997 an Office medical adviser noted that the history was unusual with acute neck pain, right arm pain and left foot pain.<sup>3</sup> He also noted that surgery was performed with less than one month of conservative treatment and that there were no radiology reports in the record.

On August 6, 1997 the Office notified appellant that it was currently unable to authorize her surgery. The Office advised that, in addition to the information requested in its July 31, 1997 correspondence, appellant's doctor also needed to provide an explanation of how the incident of April 21, 1997 caused the need for her surgery.

On August 12, 1997 the Office authorized Dr. Brennan to treat appellant for residuals of her April 21, 1997 work injury. On August 18, 1997 the Office clarified that it approved treatment for a cervical strain injury. The Office noted that appellant's cervical discectomy and fusion were not accepted conditions.

Appellant submitted a magnetic resonance imaging (MRI) scan report dated March 31, 1997. The radiologist noted mild retrolisthesis of C5 relative to both C4 and C6 and spondylosis at the C5-6 level. The radiologist reported: "I do not see a disc herniation at any level."

In a report dated August 26, 1997, Dr. Brennan stated that appellant's arm pain had completely resolved but that she was left with motion-related neck pain. "There is every reason to believe," he reported, "that [appellant's] original C5-6 disease was secondary to a progressive degenerative cervical condition and aggravated by work at the [employing establishment]." He stated that appellant had cervical arthritis and a certain component of cervical facet arthritis as well, which was going to result in flexion, extension and rotation neck pain. Dr. Brennan added: "I do not feel that this is related to the original pathology, and I do not feel the operative site is any more involved than the other cervical facet areas."

On September 17, 1997 the Office again requested that appellant submit additional information, including treatment notes prior to her April 21, 1997 injury. Also on September 17, 1997 the Office requested additional information directly from Dr. Brennan. The Office

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<sup>3</sup> Appellant stated on her claim form that pain shot from her neck to her toe and that she had no feeling in her right arm or left foot.

provided him with a statement of accepted facts and asked that he provide medical rationale for his opinion that the May 16, 1997 surgery was causally related to the injury of April 21, 1997.

A March 25, 1997 report from Dr. Brennan indicated that appellant had been having some neck and arm pain for three weeks. The pain was occasionally bilateral, currently favoring the right upper extremity in the proximal aspect, but she reported that this changes occasionally. Dr. Brennan noted some spondylosis on plain films with some bone spurring at C5-6. He ordered an MRI scan of the cervical spine.

In a report dated April 24, 1997, three days after appellant's employment injury, Dr. Brennan stated that appellant had no change in her neck and arm pain complaints.

In a May 1, 1997 report, Dr. Brennan stated that appellant was no better with cervical traction and had been receiving conservative treatment for quite some time. He noted that her imaging studies showed a C5-6 right osteophytic spurring process significantly different from other levels of her cervical spine. Dr. Brennan stated: "I believe she would benefit from anterior cervical discectomy and fusion at C5-6 with iliac crest bone grafting and Orion plate placement.... We will pursue the anterior cervical discectomy and removal of osteophytes and schedule it as soon as possible."

In a brief report dated November 13, 1997, Dr. Brennan stated:

"I am the neurosurgeon who took care of [appellant] in the early part of 1997. She was diagnosed with cervical spondylosis and had anterior cervical discectomy and fusion at C5-6. This condition was aggravated and worsened by her lifting a mailbox at work on the date she describes as being April 21, 1997."

A treatment note dated March 12, 1997 indicated that appellant was having pain in her neck shooting down her back. The note indicated that symptoms started on March 4, 1997 and that appellant went to the emergency room on March 5, 1997. There was no obvious traumatic incident.

In a decision dated December 30, 1997, the Office denied authorization for surgery and appellant's claim for wage-loss compensation beginning May 16, 1997.

Appellant requested reconsideration and submitted a deposition of Dr. Brennan taken on November 9, 1998. Dr. Brennan testified that the employment incident of April 21, 1997 could have or probably aggravated appellant's preexisting cervical condition. It stood to reason, he explained, that "if someone goes to an emergency room that their condition is worsened." Dr. Brennan denied, however, that the employment incident of April 21, 1997 resulted in or caused the need for surgery on May 16, 1997. Asked whether the April 21, 1997 incident caused an aggravation that resulted in surgery, Dr. Brennan testified that, if appellant aggravated her cervical condition on April 21, 1997, "I do n[o]t think it [i]s fair to say that she needed to have the surgery because of April 21, 1997, that is not true." He further testified that it was an untrue statement that the incident of April 21, 1997 caused the need for surgery the following month. When asked, "So if she was n[o]t going to have -- undergo surgery for the cervical condition

prior to April 21, 1997, would the one on April 21[, 1997] then worsen the condition so she had the surgery?” Dr. Brennan replied, “No, I do n[o]t think that [i]s a fair way of looking at it.”

In a merit decision dated January 28, 1999, the Office denied modification of its prior decision.

The Board finds that the medical evidence does not establish that appellant’s surgery on May 16, 1997 and subsequent disability were causally related to her employment injury of April 21, 1997.

A claimant seeking benefits under the Federal Employees’ Compensation Act<sup>4</sup> has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>5</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>6</sup>

It is undisputed in this case that appellant sustained an injury while in the performance of her duties on April 21, 1997. The Office accepted her claim for the condition of back strain, the diagnosis given by the emergency room physician. Appellant seeks authorization for her surgery on May 16, 1997 and compensation for subsequent wage loss. She therefore bears the burden of proof to establish that this surgery and subsequent disability were causally related to her accepted employment injury.<sup>7</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her claimed condition or disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury, and must explain from a medical perspective how the claimed condition or disability is related to the injury.<sup>8</sup>

The record in this case contains no such evidence. The medical opinion evidence consists of report’s from appellant’s orthopedic surgeon, Dr. Brennan, the physician who

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> See 5 U.S.C. § 8103(a) (the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies, prescribed or recommended by a qualified physician, that the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of any monthly compensation). To be entitled to reimbursement of medical expenses, however, the employee must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation must include supporting rationalized medical evidence. *Bertha L. Arnold*, 38 ECAB 282 (1986); *Delores May Pearson*, 34 ECAB 995 (1983); *Zane H. Cassell*, 32 ECAB 1537 (1981); *John R. Benton*, 15 ECAB 48 (1963).

<sup>8</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

performed the anterior cervical discectomy at C5-6 and fusion on May 16, 1997. Dr. Brennan made clear in his November 9, 1998 deposition that the employment incident of April 21, 1997 did not result in or cause the need for the surgery he performed. As this evidence negates a causal relationship between the accepted employment injury and appellant's May 16, 1997 surgery and subsequent disability, the Board finds that the Office properly denied authorization for the surgery and appellant's claim for wage loss compensation.

Although Dr. Brennan testified that the incident of April 21, 1997 could have or probably aggravated appellant's preexisting cervical condition, the opinion he provided was equivocal and speculative and not sufficiently rationalized to establish the element of causal relationship.<sup>9</sup>

The January 28, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
September 5, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> See *Jennifer Beville*, 33 ECAB 1970 (1982) (finding that a physician's opinion that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value); see also *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).